

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Amateur Service Vanity Call Sign Application  
Received Prior to Opening of Filing Gate 2. )

## MEMORANDUM OPINION AND ORDER

Adopted: December 11, 1996

Released: December 19, 1996

By the Chief, Licensing Division:

### I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses Petitions for Reconsideration ("Petitions") filed by Craig L. Kolk, Thomas Cooper, and Ron Weaver ("Petitioners").<sup>1</sup> The Petitions request reconsideration of the decision by the Wireless Telecommunications Bureau's Licensing Division to dismiss their applications for amateur station vanity call signs. The dismissals were based on the fact that the documents were unacceptable for filing because they arrived at the filing location prematurely. For the reasons set forth below, and consistent with our action on similar requests,<sup>2</sup> the Petitions are denied.

### II. BACKGROUND

2. On December 23, 1994, the Commission adopted a *Report and Order*<sup>3</sup> establishing a first-come, first-served system for the assignment of vanity call signs to amateur stations. The strong interest in vanity call signs shown in the proceeding demonstrated that the number of applications filed initially could be very large. A major concern in that proceeding was that the system be considered fair and equitable by the amateur service community. The vanity call sign system established by the Commission, therefore, incorporates filing priorities that allow certain amateur operators to request call signs before the system is opened to all amateur operators. These filing priorities appeared to be perceived by amateur operators as fair. First, licensees who formerly held a particular call sign may request that call sign. Where the person who formerly held a particular call sign is now deceased, the call sign can be requested by a licensee who is

---

<sup>1</sup> Petitions for Reconsideration filed by Dennis Alexander, Daniel D. Brown, and E. Randolph Kielich were subsequently withdrawn.

<sup>2</sup> See *Memorandum Opinion and Order*, released November 26, 1996, DA 96-1979, \_\_\_\_ FCC Rcd \_\_\_\_, where nine other petitions for reconsideration of the dismissal of amateur vanity call sign applications were denied because the application packages were received before filing Gate 2 opened.

<sup>3</sup> See 10 FCC Rcd 1039 (1995).

a close relative of the deceased. Next, an amateur radio club may request *in memoriam* the call sign previously shown on the station license of a deceased person who was a member of the club. The system is then opened to those holding the highest class of operator license who may request any unassigned call sign. Next in line are those holding the second highest class of license.<sup>4</sup> Thereafter, any amateur operator may request any unassigned call sign otherwise consistent with his or her class of operator license.<sup>5</sup>

3. The procedures adopted to implement the vanity call sign system are detailed in public announcements. These procedures include opening the system gradually through a series of filing gates ("gates") that, once open, do not close. The gates implement the filing priorities. The gates are:<sup>6</sup>

o Gate 1. (Opened May 31, 1996.<sup>7</sup>) (1) A primary station licensee may request the call sign previously shown on the license, or shown on the station license of a now-deceased close relative. (2) A club station license trustee may request the call sign previously shown on the club station license.

o Gate 1(A). (Opened July 22, 1996.<sup>8</sup>) A club station license trustee may request *in memoriam* the call sign previously shown on the station license of a deceased person who was a member of the club.

o Gate 2. (Opened September 23, 1996.<sup>9</sup>) (1) An Amateur Extra Class operator may request a Group A, B, C or D call sign<sup>10</sup> for his or her primary station. (2) An Amateur Extra Class operator may request, including request *in memoriam*, a Group A, B, C or D call sign for the club station for which he or she is license trustee.

o Gate 3. (Opening to be announced.) (1) An Advanced Class operator may request a Group B, C, or D call sign for his or her primary station. (2) An Advanced Class operator may request, including request *in memoriam*, a Group B, C or D call sign for the club station for which he or

---

<sup>4</sup> Amateur Extra Class is the highest operator class. Advanced is the second highest operator class. 47 C.F.R. § 97.501.

<sup>5</sup> See Fact Sheet PR 5000, # 206-V, August 1996 (establishes procedures for the vanity call sign system).

<sup>6</sup> See Fact Sheet, PR 5000, # 206-V, August 1996, *supra* (establishes filing gates).

<sup>7</sup> See Public Notice *Amateur Station Vanity Call Sign System Filing Gate Opens May 31, 1996*, dated May, 1996.

<sup>8</sup> See Public Notice *Amateur Station Vanity Call Sign System Filing Gate 1A Opens July 22, 1996*, dated June 21, 1996.

<sup>9</sup> See Public Notice *Amateur Station Vanity Call Sign System Filing Gate 2 Opens September 23, 1996*, dated August 22, 1996.

<sup>10</sup> See Fact Sheet PR 5000, # 206-S, August 1996 (establishes procedures for the amateur station sequential call sign system, including call sign groups).

she is license trustee.

o Gate 4. (Opening to be announced.) (1) A General, Technician Plus, or Technician Class operator may request a Group C or D call sign for his or her primary station. (2) A General, Technician Plus, or Technician Class operator may request, including request *in memoriam*, a Group C or D call sign for the club station for which he or she is license trustee. (3) A Novice Class operator may request a Group D call sign for his or her primary station.

4. On Monday, September 23, 1996, the day that Gate 2 opened, there were 69,580 Amateur Extra Class operators. On that day, applications for vanity call signs from 4,188 Amateur Extra Class licensees were filed properly at the designated filing location, our Lockbox Agent, Mellon Bank (Mellon).<sup>11</sup> The application documents filed by Petitioners, however, arrived at Mellon on September 20, 1996, and were dismissed because they had been filed before Gate 2 opened. The Petitioners have requested reconsideration of the dismissal of their applications alleging that they were improperly dismissed.

### III. THE PETITIONS

5. Messrs. Kolk and Cooper sent their application packages *via* a private courier service which delivered the packages early. Mr. Kolk states that, despite the fact that his application was plainly marked to be delivered on September 23, 1996, the courier delivered it early. Mr. Cooper alleges that the courier asked Mellon personnel whether delivery after close of business on September 20, 1996, was sufficient to allow the applications to be accepted "as if they were received on September 24 (sic)", and was told "yes." Petitioners state that their applications were dismissed in error, and request that they be reinstated.

6. Mr. Weaver also used a private courier service. He states that there were five applications from other persons in the package that contained his application for a vanity call sign. He does not identify these persons. He further states that the package clearly stated that delivery "was not to be before Saturday" the 21st of September. Mr. Weaver alleges that the courier that he used erroneously delivered the application package to Mellon on September 20th. Petitioner requests reconsideration of the dismissed applications.

### IV. DISCUSSION

7. The vanity call sign filing procedures are intended to provide amateur operators with a fair and efficient implementation of the vanity call sign system, as well as ease administrative burdens on the Commission. Gate 2 represents to many amateur operators one of the most important stages in the implementation of the system. It is the earliest of the gates that allows

---

<sup>11</sup> The filing location mailing address for an amateur station vanity call sign request is: Federal Communications Commission, Amateur Vanity Call Sign Requests, P.O. Box 358924, Pittsburgh, PA 15251-5924. For courier or hand delivery, the filing location is: Federal Communications Commission, c/o Mellon Bank, 525 William Penn Way, 27th Floor, Room 153-2713, Pittsburgh, PA 15259, Attn: Wholesale Lockbox Shift Supervisor. See *Notice of Fee Due for FCC 610V, FCC 1070V*, November 1995.

an amateur operator -- in this case those who have attained the highest class of amateur operator license -- to submit a list of twenty-five call signs from which the first assignable call sign is granted first-come, first-served. There is an incentive, therefore, for amateur operators wanting the widest choice among vanity call signs to file their applications promptly after the appropriate filing gate opens. In the interest of fairness, the Commission made public the details of the vanity call sign system procedures, including explanations in fact sheet documents and posting on our Internet Home Page. Also in the interest of fairness, the Commission sought to discourage persons from filing applications before the gate opened. Included in the procedures are the following statements:<sup>12</sup>

Starting gates are being used to implement the system in stages. Applications filed before the appropriate starting gate opens will be dismissed. A public notice will announce the opening of each gate:

Gate 2. An Amateur Extra Class operator may request a Group A, B, C or D call sign for his or her primary station.

8. On August 22, 1996, the Commission released a Public Notice stating that Gate 2 would open on September 23, 1996.<sup>13</sup> As Amateur Extra Class operators, therefore, the Petitioners became eligible to file their applications for vanity call signs on that day. They sent packages containing their application documents to Mellon *via* a private courier service. Their packages arrived at Mellon on September 20, 1996. In accord with the established procedures for handling prematurely-filed applications, the applications of the Petitioners were dismissed.<sup>14</sup>

9. The Petitioners had several options open to them, all of which were used successfully by the 4,188 Amateur Extra Class licensees who filed applications for vanity call signs on September 23, 1996. Applications for vanity call signs were filed electronically and by documents delivered to Mellon in person, by courier, and by mail. Messrs. Kolk, Cooper, and Weaver opted to use a private courier service. The courier delivered their application packages to Mellon on Friday, September 20, 1996. Their application documents, therefore, arrived at the designated filing location prior to the opening of filing Gate 2, causing them to be dismissed as

---

<sup>12</sup> See *Fact Sheet*, PR 5000, # 206-V, August 1996, p. 2, *supra*.

<sup>13</sup> See *Public Notice Amateur Station Vanity Call Sign System Filing Gate 2 Opens September 23, 1996*, dated August 22, 1996, *supra*.

<sup>14</sup> See *Coalition for Preservation of Hispanic Broadcasting v. FCC*, 931 F.2d 73, 77 (1991) and *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275, 281 (D.C. Cir. 1993) (timely filing of application is prerequisite for seeking to challenge a licensing action).

See also *Memorandum Opinion and Order*, FCC 96-177, \_\_\_ FCC Rcd \_\_\_ (1996) (reiterates necessity of timely filing of application in order to challenge licensing action).

See also *Letters*, dated June 1, 1995, from Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Lawtell Corporation and to The Perry Group (returned applications filed prematurely as unacceptable for filing).

unacceptable for filing. The Petitioners do not show any error or culpability on the part of the Commission or Mellon's Lockbox Shift Supervisor. The Commission is not responsible for the delivery of the application documents before the opening of the gate.

10. Section 1.958(a)(6) of the Commission's Rules, 47 C.F.R. § 1.958(a)(6), states that an application that is not in accordance with a requirement of the Commission will be considered to be defective. Pursuant to Section 1.958(b) of the Commission's Rules, 47 C.F.R. § 1.958(b), an application that is defective on its face will not be accepted for filing and will be dismissed.<sup>15</sup> The requirement here was clear. Applications from persons becoming eligible to request a vanity call sign at the opening of filing Gate 2 could be filed only on or after September 23, 1996. They could not be filed before September 23, 1996. Further, notice had been given that applications filed *before* the opening of the appropriate filing gate would be dismissed. Given these circumstances, the dismissal of the subject applications was proper.<sup>16</sup> Moreover, it would be unfair to amateur operators who filed their requests in a timely manner to include, in the first-come, first-served vanity call sign system selection process, requests that were filed before the appropriate filing gate opened.

## V. DECISION

11. Upon reconsideration and for the reasons stated above, the Petitions are denied. As Amateur Extra Class operators, the Petitioners are eligible to file new applications for amateur station vanity call signs. Their new applications, however, will be processed as of the date that they are received at the filing location.

12. In view of the foregoing, the dismissal of the vanity call sign system application documents filed by the Petitioners IS AFFIRMED.

## WIRELESS TELECOMMUNICATIONS BUREAU

Walter G. Boswell  
Chief, Licensing Division

---

<sup>15</sup> See *Public Notice*, FCC 85-534 (36206), released October 4, 1984, 58 RR 2d 1706, 1707 (1984), in which the Commission announced that it would not in the future consider any claims that a delivery service was responsible for not filing the application on time. Further, if the applicant requests a waiver of the application filing deadline, it would have to show that filing did not meet the filing requirements because of a calamity of such a widespread nature that even the best of planning could not have avoided it.

<sup>16</sup> See n.2, *supra*.